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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DR. MORGAN REYNOLDS, on behalf of	:	
The United States of America	:	
	:	
Plaintiff,	:	<u>ECF CASE</u>
vs.	:	
	:	July 16, 2008
SCIENCE APPLICATIONS	:	
INTERNATIONAL CORP., et al	:	07 CIV 4612 (GBD)
	:	
Defendants.	:	

**AFFIRMATION IN OPPOSITION TO
UNDERWRITERS LABORATORIES INC.'s BILL OF COSTS**

I, JERRY V. LEAPHART, of JERRY V. LEAPHART & ASSOCS. PC, am an attorney at law, duly licensed to practice before this court and am attorney of record for the plaintiff, Dr. Morgan Reynolds , in the above captioned matter.

This affirmation is submitted in opposition to that certain Bill of Costs submitted and filed by defendant, Underwriters Laboratories Inc., (defendant) on or about July 7, 2008, Docket # 138, (Bill of Costs).

In the main, defendant's said Bill of Costs is deficient in that it does not adequately specify allowable costs that are or might be associated with the outcome in this case.

On or about June 26, 2008, the court, Hon. George B. Daniels issued a Memorandum Decision (Memorandum Decision), Docket # 136 in this matter that granted defendants' motions to dismiss plaintiff's complaint with prejudice. However, the said Memorandum Decision denied defendants' motions for sanctions.

Defendant Underwriters Laboratories Inc. joined in the motion to dismiss submitted by another defendant and separately filed a motion for sanctions. As that motion was denied, it is entirely unclear what, if any, costs the said defendant would be entitled to apply for.

The only allowable cost requested by said defendant is in the amount of \$160.20 that is said to cover "fees for exemplification and copies of papers necessarily obtained for use in the case" (Fees for exemplification). However, the affirmation submitted by Attorney Philip C. Semprevivo contains no reference at all as to any such Fees for exemplification, let alone how such costs were calculated. Accordingly, that claim must, of necessity, be denied.

Paragraph 5 of defendant counsel's Affirmation states:

"5. The "Other costs" claimed in the Bill of Costs include the following necessarily incurred costs: (1) courier charges; (2) computer research-West Law; (3) computer research-Pacer Service Center; & (4) Facsimile."

The "Other costs" set forth in the quoted paragraph 5 are not allowable costs under 28 USC § 1920 and must, as a matter of law, be denied.

Defendant's said Bill of Costs in fact contains no claim whatsoever for allowable costs under 28 USC § 1920 that, for purposes of clarity, provides as follows:

28 USCS § 1920. Taxation of costs

"A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title [28 USCS § 1923];
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title [28 USCS §1828].

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

Based upon the foregoing, defendant's Bill of Costs is demonstrably deficient and must be denied in its entirety.

Respectfully submitted,

THE PLAINTIFF

By /s/ Jerry V. Leaphart
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Dated: Danbury, CT
July 16, 2008

ELECTRONIC CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2008, a copy of the foregoing Plaintiff's Motion was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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